

US IS LIMITED TO A REFUND OR CREDIT OF THE PRORATED MONTHLY OR OTHER CHARGES YOU PAID OR OWE US FOR THE APPLICABLE SERVICE OR DEVICE. YOU AGREE WE ARE NOT LIABLE FOR PROBLEMS CAUSED BY YOU OR A THIRD PARTY. EXCEPT TO THE EXTENT PROHIBITED BY LAW, ALL CLAIMS MUST BE BROUGHT WITHIN 2 YEARS OF THE DATE THE CLAIM ARISES.

23. * Indemnification. You agree to defend, indemnify, and hold us harmless from any claims arising out of use of the Service or any Devices, breach of the Agreement, or violation of any laws or regulations or the rights of any third party by you or any person on your account or that you allow to use your Service or Device

24. * Enforceability and Assignment. A waiver of any part of the Agreement in one instance is not a waiver of any other part or any other instance and must be expressly provided in writing. If we don't enforce our rights under any provisions of the Agreement, we may still require strict compliance in the future. Except as provided in Section 2, if any part of the Agreement is held invalid that part may be severed from the Agreement. You can't assign the Agreement or any of your rights or duties under it without our written consent. We may assign all or part of the Agreement or your debts to us without notice. The Agreement is the entire agreement between us and defines all of the rights you have with respect to your Service or Device, except as provided by law, and you cannot rely on any other documents or statements by any sales, service representatives or other agents. If you purchase a Device, services or content from a third party, you may have a separate agreement with the third party; T-Mobile is not a party to that agreement. The original version of the Agreement is in English. To the extent there are conflicts between the English version and any other language version, the English version will control. Any determination made by us pursuant to this Agreement, shall be in our sole reasonable discretion. Paragraphs marked "*" continue after termination of our Agreement with you.

25. * Choice of Law. This Agreement is governed by the Federal Arbitration Act, applicable federal law, and the laws of the state in which your billing address in our records is located, without regard to the conflicts of laws rules of that state. Foreign laws (except for Puerto Rico) do not apply. Arbitration or court proceedings must be in: (a) the county and state in which your billing address in our records is located, but not outside the U.S.; or (b) in Puerto Rico if your billing address is in Puerto Rico. If any provision of the Agreement is invalid under the law of a particular jurisdiction, that provision will not apply in that jurisdiction.

26. Additional Terms for T-Mobile Prepaid Customers. To use T-Mobile Prepaid Service you must have a prepaid account balance; Service will be suspended when your account balance reaches zero. If you purchase a Device that is sold for use on T-Mobile Prepaid Service, you agree that you intend it to be activated on our Service, and do not intend to, and will not, resell, modify and/or export the Devices, or assist someone in these activities. The charges for Service and the expiration period for your prepaid account balance may vary. see www.t-mobile.com for more information. You must use your account balance before the expiration date. Prepaid Service is non-refundable (even if returned during the return period), and no refunds or other compensation will be given for unused airtime balances, lost or stolen prepaid cards, or coupons. Coverage specific to T-Mobile Prepaid Service may be found at www.t-mobile.com and differs from coverage related to T-Mobile's postpaid Service

27. Additional Terms for FlexPay Customers. T-Mobile FlexPay Service. You must pay for Services in advance each month ("Monthly Account") and Services will become available after we apply your payment. Your first Service cycle may start several days after activation. You may be unable to make changes to your account during certain periods of your Service cycle. **FlexAccount.** When you have used all of your monthly Allotments, to buy additional Services, you must fund your FlexAccount. All lines on a multi-line account share and draw from one FlexAccount. A FlexAccount may be only used to: (1) purchase Services when you exhaust your Service Allotment(s); (2) purchase Services not included in your Rate Plan (e.g., downloads, messaging, 411, data and international services); and (3) pay your bill. By using any additional Services, applicable charges will automatically be deducted from your FlexAccount. FlexAccount dollars you transfer to pay your bill in excess of the Amount Due cannot be returned to your FlexAccount. You cannot transfer funds from your Monthly Account to your FlexAccount. FlexAccount terms and rates differ from the terms and rates associated with our Prepaid Service (see www.t-mobile.com for terms and rates).

*** Service cancellation.** If you cancel your FlexPay account within the Return Period, all funds in your Monthly Account for Services not used are refunded. If you cancel your FlexPay account after the Return Period, we may apply your FlexAccount balance to any amounts you owe us (including any Early Termination Fees). Funds in your Monthly Account will not be refunded if you cancel after the Return Period. **Month-To-Month Plans.** To avoid cancellation and keep your account active, you must, at least once every 90 days: (a) pay for Services, (b) add funds to your FlexAccount, or (c) use your FlexAccount for Services. **One or Two Year Plans.** All lines on the account will be cancelled unless your monthly Services (prorated or otherwise) are activated at least once every ninety days after the due date listed in your payment reminder

Payments. You may access billing details on our website at www.my.t-mobile.com. If your "Amount Due" differs from the amount stated on your Payment Reminder, you must pay the Amount Due as stated on www.my.t-mobile.com to continue Service. If you do not pay the Amount Due by the date on your Payment Reminder, your monthly Services will not be available. If you pay after the date on your Payment Reminder, the Amount Due and the Service allotments you receive will be prorated for the number of days remaining in your Service cycle. **Partial Payment:** If you partially pay, your Services will not be available until your partial payment is equal to or greater than the prorated charges for Service for the remaining days in your Service cycle. The Allotments you receive will be prorated based on the number of days remaining in that Service cycle. **Payment in Last Five Days:** To start Services during the last five days of the Service cycle, you must pay for those days plus the Amount Due for the following Service cycle. If you do not pay that full amount, then your payment will be applied as a partial payment toward the Amount Due for the next month's Service cycle. **Extension of Term:** If you are on a one or two-year contract, your Term may be extended by the total number of days for which you have not paid for monthly

Services (e.g., if you only pay for pro-rated Services for the last 25 days of a 30 day Service cycle your Term may be extended by 5 days.) **Multi-line accounts:** You will have one Amount Due for all lines on a multi-line account, and any payments will be applied proportionately across all lines and all Services (e.g., if you have three lines on your account, you cannot pay for only one of the three lines, or just for certain Services). **Control Charge:** You will be charged a **Control Charge per line per month if you are not enrolled in and using EasyPay** (an automatic monthly recurring payment Service). The Control Charge may apply for at least one Service cycle after you sign up for EasyPay. If your payment fails, you will be required to pay a Control Charge to reinstate your Services. We may remove EasyPay from your account without notice if we determine in our sole discretion that the account is invalid or if an EasyPay payment fails.

Voluntary Suspension. We may allow you to voluntarily suspend Services and any amounts in your Monthly Account or unused Allotments will not be refunded or credited. Upon voluntary suspension, your Services and FlexAccount will no longer be available for use. To maintain the voluntary suspension and avoid cancellation, you must pay a monthly access fee and the Control Charge (if not using Easy Pay) for each line in advance of each month of the voluntary suspension.

28. Additional Terms for Wi-Fi Mobile Calling. These additional terms apply only to calls made over a Wi-Fi network ("Wi-Fi Calling") using our mobile Devices. For our T-Mobile @Home service, please see the supplemental terms and conditions contained in the box with the HiPort router.

Billing: Wi-Fi Calling is a voice service and requires a qualifying rate plan, a Wi-Fi-enabled Device, wireless router, broadband internet connection and Wi-Fi signal. When you use Wi-Fi Calling with the add-on feature, calls you place to, or receive from, U.S. numbers while connected to a Wi-Fi network are included in the add-on feature. All data, messaging, and other Services will be billed according to your regular Rate Plan and other pricing. Billing for the entirety of any call will be based on the network (Wi-Fi or cellular) that your Device was connected to when you initially made or received the call. When making or receiving a call, check your Device indicator and manual to know if you are on a cellular or Wi-Fi network. Additional incoming and outgoing calls initiated while you are already connected to a network (e.g., call waiting, call forwarding, conference calling) also are billed based upon the network upon which the original call was initiated. Calls may not transfer between Wi-Fi networks or between Wi-Fi networks and a non T-Mobile cellular network, causing a call to drop. If you use a Wi-Fi-enabled Device but do not purchase the Wi-Fi Calling add-on feature, all calls on any Wi-Fi network will be charged according to your T-Mobile Rate Plan. For these calls, we will bill you based on the time at the location of the Wi-Fi network (or a nearby cell tower) if we know where it is. If we are unable to determine the location of the Wi-Fi network, we may base the time of the call on the local time of your billing address, which can affect the designation of your calls such as a night or weekend call.

Service Limitations, Connectivity & International Use: Wi-Fi Calling is not available at T-Mobile HotSpot locations outside the U.S. You acknowledge and agree that your use of any Wi-Fi network is permissible and that you (and not T-Mobile) are responsible for your use. Cell Broadcasts (alerts that go to certain customers) and Wireless Priority Service (WPS) may not be available with Wi-Fi Calling. If you have the Wi-Fi Calling add-on feature and use the Wi-Fi Calling service outside of the U.S., calls to U.S. numbers are not included as part of the add-on feature and are charged under your Rate Plan; calls to international numbers are charged under international rates. **Please see important international 9-1-1 information below.** You will be responsible for all internet access charges.

Important Emergency 9-1-1 Information: When making a 9-1-1 call, always state the nature of your emergency and provide both your location and phone number, as the operator may not automatically receive this information. 9-1-1 service via Wi-Fi Calling uses the internet and operates differently than traditional 9-1-1. 9-1-1 service may not be available or reliable and your ability to receive emergency services may be impeded. For example, 9-1-1 service may not work during power or internet (e.g., cable service) outages or disruptions or if your internet or T-Mobile Service are suspended. Location information when using Wi-Fi Calling may be limited or unavailable. You must provide us with a valid street address for the location of your primary use of Wi-Fi Calling ("Primary Address"). If the location at which you primarily use Wi-Fi Calling changes, either temporarily or permanently, you must register the new address by accessing your account via [my.t-mobile.com](#) or by contacting T-Mobile's Customer Care; it may take 24 hours or more to update the address information. If you do not give us a Primary Address, we may block your usage of certain Wi-Fi networks. We may use a variety of information and methods to determine the location of a 9-1-1 call, including our GSM wireless network if available in your location, the location of your Primary Address, or the location of a T-Mobile HotSpot (if applicable). Even with this information, an emergency operator may not be able to receive or use the address information (or your phone number) to locate you in order to provide emergency services. When you use the Wi-Fi Calling service away from your Primary Address, we may have no or very limited information about your location, which could result in a call being routed to an out-of-area public safety agency, the agency receiving incomplete information about your call and your location, or your call being routed to an emergency response center, which will ask you for your location and use that information to route the call to a public safety agency. **If you dial 9-1-1 while using the Wi-Fi Calling service outside the U.S., 9-1-1 services may not be available.**

29. Additional Terms for Data Plans and Features

The following terms apply to your data plan or feature ("Data Plan"). To the extent any term in your Data Plan expressly conflicts with the general Terms and Conditions, which also apply to your service, the term in your Data Plan will govern. Please read your Data Plan carefully.

1. Permissible and Prohibited Uses

Your Data Plan is intended for Web browsing, messaging, and similar activities on your device and not on any other equipment. Unless explicitly permitted by your Data Plan, other uses, including for example, tethering your device to a

personal computer or other hardware, are not permitted

Examples of prohibited uses include but are not limited to: (a) server devices or host computer applications, including continuous Web camera posts or broadcasts, automatic data feeds, automated machine-to-machine connections or peer-to-peer (P2P) file-sharing applications that are broadcast to multiple servers or recipients, "bots" or similar routines that could disrupt net user groups or email use by others or other applications that denigrate network capacity or functionality; (b) as a substitute or backup for private lines or dedicated data connections; (c) any activity that adversely affects the ability of other users or systems to use either T-Mobile's services or the network-based resources of others, including the generation or dissemination of viruses, malware or "denial of service" attacks; (d) accessing, or attempting to access without authority, the information, accounts or devices of others, or to penetrate, or attempt to penetrate, T-Mobile's or another entity's network or systems; or (e) running software or other devices that maintain continuously active Internet connections when a computer's connection would otherwise be idle, or "keep alive" functions. For example, you cannot use a Data Plan for Web broadcasting, or for the operation of servers, telemetry devices and/or supervisory control and data acquisition devices

2. Protective Measures

To provide a good experience for the majority of our customers and minimize capacity issues and degradation in network performance, we may take measures including temporarily reducing data throughput for a subset of customers who use a disproportionate amount of bandwidth, if your total usage exceeds 10GB (amount is subject to change; please periodically check T-Mobile.com for updates) during a billing cycle, we may reduce your data speed for the remainder of that billing cycle. We may also suspend, terminate, or restrict your data session, Plan, or service if you use your Data Plan in a manner that interferes with other customers' service, our ability to allocate network capacity among customers, or that otherwise may degrade service quality for other customers.

3. Downloadable Content and Applications

You can purchase Content and Applications (e.g., downloadable or networked applications, wallpapers, ringtones, games, and productivity tools) ("Content & Apps") for and with your compatible device. Some Apps that you can purchase with your device are not sold by T-Mobile, for these Apps, you can identify the third party seller at the point of purchase. **For these third party purchases, although the charges will appear on your T-Mobile bill, T-Mobile is not responsible for the App, including download, installation, use, transmission failure, interruption, or delay, or any content or website you may be able to access through the App.** Any support questions for these Apps should be directed to the third party seller identified at the point of purchase. When you use, download or install an App sold by a third party seller, you may be subject to license terms between you and the third party seller and App developer. When you use, download, or install Content or Apps that you purchase from T-Mobile, the Content or App is licensed to you by T-Mobile and may be subject to additional license terms between you and the creator/owner of the Content or App. **Whether purchased from T-Mobile or a third party seller, any Content or App you purchase is licensed for personal, lawful, non-commercial use on your device only.** You may not transfer, copy, or reverse engineer any Content or App, or alter, disable or circumvent any digital rights management security features embedded in the Content or App.

T-Mobile is not responsible for any third party content or website you may be able to access using your device. You may encounter advertisements from other entities ("Third Party Ads") while you are using web2go, browsing the Internet, or using an application on your device. T-Mobile is not responsible for any Third Party Ads, or for any website or content that you may access by clicking on or following a link contained in a Third Party Ad.

T-Mobile may retain, use, and share information collected when you download, use, or install some Content or Apps, may update your Content or App remotely, or may disable or remove any Content or App at any time. Refer to T-Mobile's Privacy Policy as well as the Content or App creator/owner's privacy policy for information regarding the use of information collected when you download, install, or use any Content or App. We are not responsible for any transmission failure, interruption, or delay related to Content & Apps, or any content or website you may be able to access through the Content or App.



Close ☐

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Service Agreement

By checking "I have read and agree to the service agreement", you will be bound to the following for a two-year term (renewable in accordance with the Terms of Service)

- 1) The Terms of Service, including the binding arbitration clause (below)
 - 2) The "Plan Terms" and other information regarding your voice and data rate plans contained on the service plan pages, and
 - 3) The terms and conditions and other information regarding features provided on the page where you selected your features
- If buying an iPhone, you agree that use of the iPhone acts as an acceptance of the Apple and third party terms and conditions included with the iPhone

TERMS OF SERVICE

"AT&T" or "we," "us" or "our" refers to AT&T Mobility LLC, acting on behalf of its FCC-licensed affiliates doing business as AT&T. "You" or "your" refers to the person or entity that is the customer of record. **PLEASE READ THIS AGREEMENT CAREFULLY TO ENSURE THAT YOU UNDERSTAND EACH PROVISION.** This Agreement requires the use of arbitration on an individual basis to resolve disputes, rather than jury trials or class actions, and also limits the remedies available to you in the event of a dispute.

SERVICE COMMITMENT / EARLY TERMINATION FEE

Your Service Commitment begins on the day we activate your service. You have received certain benefits from us in exchange for any Service Commitment greater than one month. If we terminate your service for nonpayment or other default before the end of the Service Commitment, or if you terminate your service for any reason other than (a) in accordance with the cancellation policy; or (b) pursuant to a change of terms, conditions or rates as set forth below, you agree to pay us with respect to each device identifier or telephone number assigned to you, in addition to all other amounts owed, an Early Termination Fee of \$175 ("Early Termination Fee"). For service activated on or after May 25, 2008, the Early Termination Fee will be reduced by \$5.00 for each full month toward your minimum term that you complete. The Early Termination Fee is not a penalty, but rather a charge to compensate us for your failure to satisfy the Service Commitment on which your rate plan is based.

AFTER YOUR SERVICE COMMITMENT, THIS AGREEMENT SHALL AUTOMATICALLY RENEW ON A MONTH-TO-MONTH BASIS UNTIL EITHER PARTY GIVES NOTICE PURSUANT TO THE TERMINATION PROVISION BELOW

CANCELLATION PERIOD / TERMINATION

You may terminate this Agreement within **thirty (30) days** after activating service without paying an Early Termination Fee. You will pay for service fees and charges incurred through the termination date, but AT&T will refund your activation fee, if any, if you terminate within three (3) days of activating the service. You may have to return any handsets and accessories purchased with this Agreement, and AT&T may charge you a restocking fee. If you terminate after the 30th day but before expiration of the Agreement's Service Commitment, you will pay AT&T an Early Termination Fee for each wireless telephone number associated with the service. Either party may terminate this Agreement at any time after your Service Commitment ends with thirty (30) days notice to the other party. We may terminate this Agreement at any time without notice if we cease to provide service in your area. We may interrupt or terminate your service without notice for any conduct that we believe violates this Agreement or any terms and conditions of your rate plan, or if you behave in an abusive, derogatory, or similarly unreasonable manner with any of our representatives, or if we discover that you are underage, or if you fail to make all required payments when due, or if we have reasonable cause to believe that your Device is being used for an unlawful purpose or in a way that may adversely affect our service, or if you provided inaccurate credit information or we believe your credit has deteriorated and you refuse to pay any requested advance payment or deposit.

CHARGES AND DISPUTES

You are responsible for paying all charges for or resulting from services provided under this Agreement. You will receive monthly bills that are due in full as shown thereon. **YOU MUST, WITHIN 100 DAYS OF THE DATE OF THE BILL, NOTIFY US IN WRITING AT AT&T, BILL DISPUTE, 1025 LENOX PARK., ATLANTA, GA 30319 ("AT&T'S ADDRESS") OF ANY DISPUTE YOU HAVE WITH RESPECT TO THE BILL, INCLUDING ANY CHARGES ON THE BILL AND ANY SERVICE WE PROVIDED FOR WHICH YOU WERE BILLED, OR YOU WILL HAVE WAIVED YOUR RIGHT TO DISPUTE THE BILL OR SUCH SERVICES AND TO BRING, OR PARTICIPATE IN, ANY LEGAL ACTION RAISING ANY SUCH DISPUTE.** Charges include, without limitation, airtime, roaming, recurring monthly service, activation, administrative, and late payment charges, regulatory cost recovery and other surcharges, optional feature charges, toll, collect call and directory assistance charges, restoral and reactivation charges, any other charges or calls billed to your phone number, and applicable taxes and governmental fees, whether assessed directly upon you or upon AT&T. To determine your primary place of use ("PPU") and which jurisdiction's taxes and assessments to collect, you are required to provide us with your residential or business street address. If you do not provide us with such address, or if it falls outside our licensed service area, we may reasonably designate a PPU within the licensed service area for you. Subscriber must live and have a mailing address within AT&T's owned network coverage area.

PURCHASES AND AUTHORITY TO USE

Your AT&T phone can be used to purchase goods and services including ring tones, graphics, games or news alerts (including subscription plans) from AT&T or elsewhere from third parties ("Goods, Content, and Services"). Goods, Content, and Services may be purchased directly with any phone assigned to your account or on-line. Charges for Goods, Content, and Services will appear on your bill. Data transport charges are also incurred in the purchase of mobile content and such charges appear separately on your bill. Unless you have a data plan, in

which case you will be billed according to your data plan, charges will be calculated at your default pay per use rate for the mobile content transport when delivered, generally per kilobyte or per megabyte. You have full-time access to your Goods, Content, and Services transaction history on our website. You are responsible for all phones and other Devices containing a SIM assigned to your account ("Devices"). Except as otherwise provided in this Agreement, if such Device is used by others to purchase Goods, Content, and Services, you are responsible for all such purchases and all associated charges. You are giving those other users your authority 1) to order Goods, Content, and Services from those Devices, including subscription services, and to incur charges for those Goods, Content, and Services that will appear on your bill, 2) to give consent required for those Goods, Content, and Services, including the consent to use that user's location information to deliver customized information to that user's Device, or to make any representation required for those Goods, Content and Service including a representation of the user's age, if requested. Usage by others can be restricted by use of parental controls or similar features. Visit our website to learn more.

LOCATION-BASED SERVICES

Your Device may be location-enabled meaning that the Device is capable of using optional Goods, Content, and Services at your request or the request of a user on your account, offered by AT&T or third parties that make use of a user's location ("Location-Based Services"), using location technology such as Global Positioning Satellite ("GPS"), wireless network location, or other location technology. Please review the terms and conditions and the associated privacy policy for each Location-Based Service to learn how the location information will be used and protected. We may also use location information to create aggregate data from which your personally identifiable information has been removed or obscured. Such aggregate data may be used for services like traffic-monitoring. It is your responsibility to notify users on your account that the Device they are using may be location-enabled. The use of certain Location-Based Services or the disclosure of location information may be restricted by use of parental controls or similar features. Visit our website to learn more.

AT&T 411 INFO

In some cases our directory assistance service (411) will use the location of a Device to deliver relevant customized 411 information based upon the user's request for a listing or other 411 service. By using this directory assistance service, the user is consenting to our use of that user's location information for such purpose. This location information may be disclosed to a third party to perform the directory assistance service and for no other purpose. Such location information will be retained only as long as is necessary to provide the relevant customized 411 information and will be discarded after such use. Please see our privacy policy at att.com/privacy for additional details about our use and protection of your personal information.

UNAUTHORIZED CHARGES TO YOUR PHONE (CALIFORNIA CUSTOMERS ONLY)

You are not liable for charges you did not authorize, but the fact that a call was placed from your phone is evidence that the call was authorized. You may submit documents, statements and other information to show any charges were not authorized. Unauthorized charges may include calls made to or from your phone or other Device after it was lost or stolen. (See section "IF YOUR PHONE IS LOST OR STOLEN.") If you notify us of any charges on your bill you claim are unauthorized, we will investigate. We will advise you of the result of our investigation within 30 days. If you do not agree with the outcome, you may file a complaint with the California Public Utilities Commission and you may have other legal rights. While an investigation is underway, you do not have to pay any charges you dispute or associated late charges, and we will not send the disputed amount to collection or file an adverse credit report about it.

UNLIMITED VOICE SERVICES

Unlimited voice services are provided solely for live dialog between two individuals. Unlimited voice services may not be used for conference calling, call forwarding, monitoring services, data transmissions, transmission of broadcasts, transmission of recorded material, or other connections which do not consist of uninterrupted live dialog between two individuals. If AT&T finds that you are using an unlimited voice service offering for other than live dialog between two individuals, AT&T may, at its option terminate your service or change your plan to one with no unlimited usage components. AT&T will provide notice that it intends to take any of the above actions, and you may terminate the agreement.

OFF-NET USAGE

If your minutes of use (including unlimited services) on other carrier networks ("off-net usage") during any two consecutive months exceed your off-net usage allowance, AT&T may, at its option, terminate your service, deny your continued use of other carriers' coverage or change your plan to one imposing usage charges for off-net usage. Your off-net usage allowance is equal to the lesser of 750 minutes or 40% of the Anytime Minutes included with your plan. AT&T will provide notice that it intends to take any of the above actions, and you may terminate the agreement.

BILLING AND PAYMENT

Usage and monthly fees will be billed as specified in your rate plan brochure, customer service summary, or rate plan information online. Except as provided below, monthly service and certain other charges are billed one month in advance, and there is no proration of such charges if service is terminated on other than the last day of your billing cycle. Monthly service and certain other charges are billed in arrears if you are a former customer of AT&T Wireless and maintain uninterrupted service on select AT&T rate plans, provided, however, that in either case, if you elect to receive your bills for your AT&T services combined with your landline phone bill (where available) you will be billed in advance as provided above. You agree to pay for incoming and outgoing calls, and data services sent to and from your Device. AIRTIME AND OTHER MEASURED USAGE ("CHARGEABLE TIME") IS BILLED IN FULL-MINUTE INCREMENTS, AND ACTUAL AIRTIME AND USAGE ARE ROUNDED UP TO THE NEXT FULL-MINUTE INCREMENT AT THE END OF EACH CALL FOR BILLING PURPOSES. AT&T CHARGES A FULL MINUTE OF AIRTIME USAGE FOR EVERY FRACTION OF THE LAST MINUTE OF AIRTIME USED ON EACH WIRELESS CALL. DATA TRANSPORT IS CALCULATED IN FULL-KILOBYTE INCREMENTS, AND ACTUAL TRANSPORT IS ROUNDED UP TO THE NEXT FULL-KILOBYTE INCREMENT AT THE END OF EACH DATA SESSION FOR BILLING PURPOSES. AT&T CALCULATES A FULL KILOBYTE OF DATA TRANSPORT FOR EVERY FRACTION OF THE LAST KILOBYTE OF DATA TRANSPORT USED ON EACH DATA SESSION. NETWORK OVERHEAD, SOFTWARE UPDATE REQUESTS, AND RESEND REQUESTS CAUSED BY NETWORK ERRORS CAN INCREASE MEASURED KILOBYTES. If you select a rate plan that includes a predetermined allotment of services (for example, a predetermined amount of airtime, megabytes or text messages), unless otherwise specifically provided as a part of such rate plan, any unused allotment of services from one billing cycle will not carry over to any other billing cycle. We may bill you in a format as we determine from time to time. Additional charges may apply for additional copies of your bill, or for detailed information about your usage of services. Charges for usage of services on networks maintained by other carriers or on networks acquired by AT&T after August 31, 2004, may appear on your bill after the billing cycle in which the usage occurred. Chargeable Time begins for outgoing calls when you press SEND.

(or similar key) and for incoming calls when a signal connection from the caller is established with our facilities. Chargeable Time ends after you press END (or similar key), but not until your wireless telephone's signal of call disconnect is received by our facilities and the call disconnect signal has been confirmed. All outgoing calls for which we receive answer supervision or which have at least 30 seconds of Chargeable Time, including ring time, shall incur a minimum of one minute airtime charge. Answer supervision is generally received when a call is answered, however, answer supervision may also be generated by voicemail systems, private branch exchanges, and interexchange switching equipment. Chargeable Time may include time for us to recognize that only one party has disconnected from the call, time to clear the channels in use, and ring time. Chargeable Time may also occur from other uses of our facilities, including by way of example, voicemail deposits and retrievals, and call transfers. Calls that begin in one rate period and end in another rate period may be billed in their entirety at the rates for the period in which the call began. If your wireless phone or other Device is lost or stolen, you must contact us immediately to report the Device lost or stolen. AT&T will take into account the information provided by the customer to evaluate on an individual basis whether grounds exist for further relief. You also remain responsible for paying your monthly service fee if your service is suspended for nonpayment. We may require payment by money order, cashier's check, or a similarly secure form of payment at our discretion.

IF YOUR PHONE IS LOST OR STOLEN

You are not liable for charges you did not authorize, but the fact that a call was placed from your phone is evidence that the call was authorized. (California Customers see section "Unauthorized Charges to Your Phone.") Once you report to us that the Device is lost or stolen you will not be responsible for subsequent charges incurred by that Device. You can report your Device as lost or stolen and suspend service without a charge by contacting us at the phone number listed on your bill or at wireless.att.com. If there are charges on your bill for calls made after the Device was lost or stolen, but before you reported it to us, notify us of the disputed charges and we will investigate. You may be asked to provide information and you may submit information to support your claim. We will advise you of the result of our investigation within 30 days. While your phone is suspended you will remain responsible for complying with all other obligations under this Agreement, including, but not limited to, your monthly fee. We and you have a duty to act in good faith in a reasonable and responsible manner including in connection with the loss or theft of your Device.

DISHONORED CHECKS AND OTHER INSTRUMENTS

We will charge you \$30 or the highest amount allowed by law, whichever is less, for any check or other instrument (including credit card chargebacks) tendered by you and returned unpaid by a financial institution for any reason. You agree to reimburse us the fees of any collection agency, which may be based on a percentage at a maximum of 33% of the debt, and all costs and expenses, including reasonable attorneys' fees, we incur in such collection efforts.

CHANGES TO TERMS AND RATES

We may change any terms, conditions, rates, fees, expenses, or charges regarding your service at any time. We will provide you with notice of such changes (other than changes to governmental fees, proportional charges for governmental mandates, roaming rates or administrative charges) either in your monthly bill or separately. You understand and agree that State and Federal Universal Service Fees and other governmentally imposed fees, whether or not assessed directly upon you, may be increased based upon the government's or our calculations. IF WE INCREASE THE PRICE OF ANY OF THE SERVICES TO WHICH YOU SUBSCRIBE, BEYOND THE LIMITS SET FORTH IN YOUR RATE PLAN BROCHURE, OR IF WE MATERIALLY DECREASE THE GEOGRAPHICAL AREA IN WHICH YOUR AIRTIME RATE APPLIES (OTHER THAN A TEMPORARY DECREASE FOR REPAIRS OR MAINTENANCE), WE WILL DISCLOSE THE CHANGE AT LEAST ONE BILLING CYCLE IN ADVANCE (EITHER THROUGH A NOTICE WITH YOUR BILL, A TEXT MESSAGE TO YOUR DEVICE, OR OTHERWISE), AND YOU MAY TERMINATE THIS AGREEMENT WITHOUT PAYING AN EARLY TERMINATION FEE OR RETURNING OR PAYING FOR ANY PROMOTIONAL ITEMS, PROVIDED YOUR NOTICE OF TERMINATION IS DELIVERED TO US WITHIN THIRTY (30) DAYS AFTER THE FIRST BILL REFLECTING THE CHANGE. If you lose your eligibility for a particular rate plan, we may change your rate plan to one for which you qualify.

CONTINGENT BENEFITS

You may receive or be eligible for certain rate plans, discounts, features, promotions, and other benefits ("Benefits") through a business or government customer's agreement with us ("Business Agreement"). Any and all such Benefits are provided to you solely as a result of the corresponding Business Agreement, and such Benefits may be modified or terminated without notice. If a business or government entity pays your charges or is otherwise liable for the charges, you authorize us to share your account information with that entity and/or its authorized agents. If you are on a rate plan and/or receive certain Benefits tied to a Business Agreement with us, but you are liable for your own charges, then you authorize us to share enough account information with that entity and/or its authorized agents to verify your continuing eligibility for those Benefits and/or that rate plan. You may receive Benefits because of your agreement to have the charges for your service, billed ("Joint Billing") by a landline company affiliated with AT&T ("Affiliate") or because you subscribe to certain services provided by an Affiliate. If you cancel Joint Billing or the Affiliate service your rates will be adjusted without notice to a rate plan for which you qualify.

DEVICE

Your Device must be compatible with, and not interfere with, our service and must comply with all applicable laws, rules, and regulations. We may periodically program your Device remotely with system settings for roaming service, to direct your device to use network services most appropriate for your typical usage, and other features that cannot be changed manually. Devices purchased for use on AT&T's system are designed for use exclusively on AT&T's system ("Equipment"). You agree that you will not make any modifications to the Equipment or programming to enable the Equipment to operate on any other system. AT&T may, at its sole and absolute discretion, modify the programming to enable the operation of the Device on other systems. You can get details on AT&T policies for modifying Equipment by calling 1-866-246-4852.

ADVANCE PAYMENTS AND/OR DEPOSITS

We may require you to make deposits or advance payments for services, which we may offset against any unpaid balance on your account. Interest will not be paid on advance payments or deposits unless required by law. We may require additional advance payments or deposits if we determine that the initial payment was inadequate. Based on your creditworthiness as we determine it, we may establish a credit limit and restrict service or features. If your account balance goes beyond the limit we set for you, we may immediately interrupt or suspend service until your balance is brought below the limit. Any charges you incur in excess of your limit become immediately due. If you have more than one account with us, you must keep all accounts in good standing to maintain service. If one account is past due or over its limit, all accounts in your name are subject to interruption or termination and all other available collection remedies.

LATE PAYMENT CHARGES

Late payment charges are based on the state to which the area code of the wireless telephone number assigned to you is assigned by the North American Numbering Plan Administration (for area code assignments see http://www.nationalnanpa.com/area_code_maps). You agree that for amounts not paid by the due date, AT&T may charge, as a part of its rates and charges, and you agree to pay, a late payment fee of \$5 in CT, DC, DE, IL, KS, MA, MD, ME, MI, MO, NH, NJ, NY, OH, OK, PA, RI, VA, VT, WI, WV; the late payment charge is 1.5% of the balance carried forward to the next bill in all other states.

SERVICE LIMITATIONS and LIMITATION OF LIABILITY

Limitations of liability set forth herein govern unless they are prohibited by applicable law. Service may be interrupted, delayed, or otherwise limited for a variety of reasons, including environmental conditions, unavailability of radio frequency channels, system capacity, priority access by National Security and Emergency Preparedness personnel in the event of a disaster or emergency, coordination with other systems, equipment modifications and repairs, and problems with the facilities of interconnecting carriers. We may block access to certain categories of numbers (e.g., 976, 900, and international destinations) at our sole discretion. Your plan may include the ability to make and/or receive calls while roaming internationally. Certain eligibility restrictions apply which may be based on service tenure, payment history and/or credit and AT&T, in its sole discretion, may block your ability to use your phone while roaming internationally until eligibility criteria is met. International roaming rates, which vary by country, will apply for all calls placed or received while outside the U.S., Puerto Rico and USVI. Compatible international-capable device required. If you want to block the ability to make and/or receive calls or use data functions while roaming internationally, dial 1-916-843-4685. When outside the U.S., Puerto Rico and USVI, you will be charged normal international roaming airtime when incoming calls are routed to voicemail, even if no message is left. For more information and for a list of currently available countries and carriers go to att.com/wirelessinternational. Many devices including iPhone transmit and receive data messages without user intervention and can generate unexpected charges when powered "on" outside the United States, Puerto Rico and USVI. AT&T may send "alerts" via SMS or email to notify you of data usage. These are courtesy alerts. There is no guarantee you will receive them. They are not a guarantee of a particular bill limit. We may, but do not have the obligation to, refuse to transmit any information through the service and may screen and delete information prior to delivery of that information to you. There are gaps in service within the service areas shown on coverage maps, which, by their nature, are only approximations of actual coverage. **WE DO NOT GUARANTEE YOU UNINTERRUPTED SERVICE OR COVERAGE. WE CANNOT ASSURE YOU THAT IF YOU PLACE A 911 CALL YOU WILL BE FOUND.** Airtime and other service charges apply to all calls, including involuntarily terminated calls. **AT&T MAKES NO WARRANTY, EXPRESS OR IMPLIED, OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, SUITABILITY, OR PERFORMANCE REGARDING ANY SERVICES OR GOODS, AND IN NO EVENT SHALL AT&T BE LIABLE, WHETHER OR NOT DUE TO ITS OWN NEGLIGENCE, for any:** (a) act or omission of a third party; (b) mistakes, omissions, interruptions, errors, failures to transmit, delays, or defects in the service provided by or through us; (c) damage or injury caused by the use of service or Device, including use in a vehicle; (d) claims against you by third parties; (e) damage or injury caused by a suspension or termination of service by AT&T; or (f) damage or injury caused by failure or delay in connecting a call to 911 or any other emergency service. Notwithstanding the foregoing, if your service is interrupted for 24 or more continuous hours by a cause within our control, we will issue you, upon request, a credit equal to a pro-rata adjustment of the monthly service fee for the time period your service was unavailable, not to exceed the monthly service fee. Our liability to you for service failures is limited solely to the credit set forth above. Unless applicable law precludes parties from contracting to so limit liability, and provided such law does not discriminate against arbitration clauses, AT&T shall not be liable for any indirect, special, punitive, incidental or consequential losses or damages you or any third party may suffer by use of, or inability to use, service or Equipment provided by or through AT&T, including loss of business or goodwill, revenue or profits, or claims of personal injuries. To the full extent allowed by law, you hereby release, indemnify, and hold AT&T and its officers, directors, employees and agents harmless from and against any and all claims of any person or entity for damages of any nature arising in any way from or relating to, directly or indirectly, service provided by AT&T or any person's use thereof (including, but not limited to, vehicular damage and personal injury), INCLUDING CLAIMS ARISING IN WHOLE OR IN PART FROM THE ALLEGED NEGLIGENCE OF AT&T, or any violation by you of this Agreement. This obligation shall survive termination of your service with AT&T. AT&T is not liable to you for changes in operation, equipment, or technology that cause your Device or software to be rendered obsolete or require modification. **SOME STATES, INCLUDING THE STATE OF KANSAS, DO NOT ALLOW DISCLAIMERS OF IMPLIED WARRANTIES OR LIMITS ON REMEDIES FOR BREACH. THEREFORE, THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU. THIS AGREEMENT GIVES YOU SPECIFIC LEGAL RIGHTS, AND YOU MAY HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE.**

ACCOUNT ACCESS

You authorize us to provide information about and to make changes to your account, including adding new service, upon the direction of any person able to provide information we deem sufficient to identify you.

VOICEMAIL SERVICE

We may deactivate your voicemail service if you do not initialize it within a reasonable period after activation. We will reactivate the service upon your request.

DISPUTE RESOLUTION BY BINDING ARBITRATION

Please read this carefully. It affects your rights.

Summary

Most customer concerns can be resolved quickly and to the customer's satisfaction by calling our customer service department at 1-800-331-0500. **In the unlikely event that AT&T's customer service department is unable to resolve a complaint you may have to your satisfaction (or if AT&T has not been able to resolve a dispute it has with you after attempting to do so informally), we each agree to resolve those disputes through binding arbitration or small claims court instead of in courts of general jurisdiction.** Arbitration is more informal than a lawsuit in court. Arbitration uses a neutral arbitrator instead of a judge or jury, allows for more limited discovery than in court, and is subject to very limited review by courts. Arbitrators can award the same damages and relief that a court can award. **Any arbitration under this Agreement will take place on an individual basis; class arbitrations and class actions are not permitted.** For any non-frivolous claim that does not exceed \$75,000, AT&T will pay all costs of the arbitration. Moreover, in arbitration you are entitled to recover attorneys' fees from AT&T to at least the same extent as you would be in court.

In addition, under certain circumstances (as explained below), AT&T will pay you more than the amount of the arbitrator's award and will pay your attorney (if any) twice his or her reasonable attorneys' fees if the arbitrator awards you an amount that is greater than what AT&T has offered you to settle the dispute.

ARBITRATION AGREEMENT

(1) AT&T and you agree to arbitrate all disputes and claims between us. This agreement to arbitrate is intended to be broadly interpreted. It includes, but is not limited to:

- claims arising out of or relating to any aspect of the relationship between us, whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory,
- claims that arose before this or any prior Agreement (including, but not limited to, claims relating to advertising),
- claims that are currently the subject of purported class action litigation in which you are not a member of a certified class, and
- claims that may arise after the termination of this Agreement

References to "AT&T," "you," and "us" include our respective subsidiaries, affiliates, agents, employees, predecessors in interest, successors, and assigns, as well as all authorized or unauthorized users or beneficiaries of services or Devices under this or prior Agreements between us. Notwithstanding the foregoing, either party may bring an individual action in small claims court. This arbitration agreement does not preclude you from bringing issues to the attention of federal, state, or local agencies, including, for example, the Federal Communications Commission. Such agencies can, if the law allows, seek relief against us on your behalf. You agree that, by entering into this Agreement, you and AT&T are each waiving the right to a trial by jury or to participate in a class action. This Agreement evidences a transaction in interstate commerce, and thus the Federal Arbitration Act governs the interpretation and enforcement of this provision. This arbitration provision shall survive termination of this Agreement.

(2) A party who intends to seek arbitration must first send to the other, by certified mail, a written Notice of Dispute ("Notice"). The Notice to AT&T should be addressed to: General Counsel, AT&T, 1025 Lenox Park Blvd., Atlanta, GA 30319 ("Notice Address"). The Notice must (a) describe the nature and basis of the claim or dispute; and (b) set forth the specific relief sought ("Demand"). If AT&T and you do not reach an agreement to resolve the claim within 30 days after the Notice is received, you or AT&T may commence an arbitration proceeding. During the arbitration, the amount of any settlement offer made by AT&T or you shall not be disclosed to the arbitrator until after the arbitrator determines the amount, if any, to which you or AT&T is entitled. You may download or copy a form Notice and a form to initiate arbitration at att.com/arbitration-forms.

(3) After AT&T receives notice at the Notice Address that you have commenced arbitration, it will promptly reimburse you for your payment of the filing fee, unless your claim is for greater than \$75,000. (The filing fee currently is \$125 for claims under \$10,000 but is subject to change by the arbitration provider. If you are unable to pay this fee, AT&T will pay it directly upon receiving a written request at the Notice Address.) The arbitration will be governed by the Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes (collectively, "AAA Rules") of the American Arbitration Association ("AAA"), as modified by this Agreement, and will be administered by the AAA. The AAA Rules are available online at www.adr.org by calling the AAA at 1-800-778-7879, or by writing to the Notice Address. (You may obtain information that is designed for non-lawyers about the arbitration process at <http://att.com/arbitration-information>.) The arbitrator is bound by the terms of this Agreement. All issues are for the arbitrator to decide, except that issues relating to the scope and enforceability of the arbitration provision are for the court to decide. Unless AT&T and you agree otherwise, any arbitration hearings will take place in the county (or parish) of your billing address. If your claim is for \$10,000 or less, we agree that you may choose whether the arbitration will be conducted solely on the basis of documents submitted to the arbitrator, through a telephonic hearing, or by an in-person hearing as established by the AAA Rules. If your claim exceeds \$10,000, the right to a hearing will be determined by the AAA Rules. Regardless of the manner in which the arbitration is conducted, the arbitrator shall issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the award is based. Except as otherwise provided for herein, AT&T will pay all AAA filing, administration, and arbitrator fees for any arbitration initiated in accordance with the notice requirements above. If, however, the arbitrator finds that either the substance of your claim or the relief sought in the Demand is frivolous or brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)), then the payment of all such fees will be governed by the AAA Rules. In such case, you agree to reimburse AT&T for all monies previously disbursed by it that are otherwise your obligation to pay under the AAA Rules. In addition, if you initiate an arbitration in which you seek more than \$75,000 in damages, the payment of these fees will be governed by the AAA rules.

(4) If, after finding in your favor in any respect on the merits of your claim, the arbitrator issues you an award that is greater than the value of AT&T's last written settlement offer made before an arbitrator was selected, then AT&T will:

- pay you the amount of the award or \$10,000 ("the alternative payment"), whichever is greater, and
- pay your attorney, if any, twice the amount of attorneys' fees, and reimburse any expenses (including expert witness fees and costs) that your attorney reasonably accrues for investigating, preparing, and pursuing your claim in arbitration ("the attorney premium")

If AT&T did not make a written offer to settle the dispute before an arbitrator was selected, you and your attorney will be entitled to receive the alternative payment and the attorney premium, respectively, if the arbitrator awards you any relief on the merits. The arbitrator may make rulings and resolve disputes as to the payment and reimbursement of fees, expenses, and the alternative payment and the attorney premium at any time during the proceeding and upon request from either party made within 14 days of the arbitrator's ruling on the merits.

(5) The right to attorneys' fees and expenses discussed in paragraph (4) supplements any right to attorneys' fees and expenses you may have under applicable law. Thus, if you would be entitled to a larger amount under the applicable law, this provision does not preclude the arbitrator from awarding you that amount. However, you may not recover duplicative awards of attorneys' fees or costs. Although under some laws AT&T may have a right to an award of attorneys' fees and expenses if it prevails in an arbitration, AT&T agrees that it will not seek such an award.

(6) The arbitrator may award declaratory or injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim. **YOU AND AT&T AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING.** Further, unless both you and AT&T agree otherwise, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding. If this specific provision is found to be unenforceable, then the entirety of this arbitration provision shall be null and void.

(7) Notwithstanding any provision in this Agreement to the contrary, we agree that if AT&T makes any future change to this arbitration provision (other than a change to the Notice Address) during your Service Commitment, you may reject any such change by sending us written notice within 30 days of the change to the Arbitration Notice Address provided above. By rejecting any future change, you are agreeing that you will arbitrate any dispute between us in accordance with the language of this provision.

MISCELLANEOUS

This Agreement, the signature or rate summary sheet, the terms included in the rate brochure(s) describing your plan and services, terms of service for products and services not otherwise described herein that are posted on applicable AT&T websites, and any documents expressly referred to herein or therein, make up the complete agreement between you and AT&T and supersede any and all prior agreements and understandings relating to the subject matter of this Agreement. If any provision of this Agreement is found to be unenforceable by a court or agency of competent jurisdiction, the remaining provisions will remain in full force and effect. The foregoing does not apply to the prohibition against class or representative actions that is part of the arbitration clause, if that prohibition is found to be unenforceable, the arbitration clause (but only the arbitration clause) shall be null and void. AT&T may assign this Agreement, but you may not assign this Agreement without our prior written consent. The law of the state of your billing address shall govern this Agreement except to the extent that such law is preempted by or inconsistent with applicable federal law. In the event of a dispute between us, the law of the state of your billing address at the time the dispute is commenced, whether in litigation or arbitration, shall govern except to the extent that such law is preempted by or inconsistent with applicable federal law. Your caller identification information (such as your name and phone number) may be displayed on the Device or bill of the person receiving your call; technical limitations may, in some circumstances, prevent you from blocking the transmission of caller identification information. You consent to the use by us or our authorized agents of regular mail, predictive or autodialing equipment, email, text messaging, facsimile or other reasonable means to contact you to advise you about our services or other matters we believe may be of interest to you. In any event, we reserve the right to contact you by any means regarding customer service-related notifications, or other such information. The original version of this Agreement is in the English language. Any discrepancy or conflicts between the English version and any other language version will be resolved with reference to and by interpreting the English version.

Connecticut Customers/Questions About Your Service

If you have any questions or concerns about your AT&T Mobility service, please call Customer Care at 1-800-331-0500, dial 611 from your wireless phone, or visit att.com/wireless. If you have questions about the Unlimited Local or Unlimited Long Distance service, please call 1-800-288-2020 or visit att.com. If you are a Connecticut customer and we cannot resolve your issue, you have the option of contacting the Department of Public Utility Control (DPUC). Online: www.state.ct.us/dpuc, Phone: 1-866-381-2355, Mail: Connecticut DPUC, 10 Franklin Square, New Britain, CT 06051.

Puerto Rico Customers

If you are a Puerto Rico customer and we cannot resolve your issue, in addition to binding arbitration or small claims court, you may notify the Telecommunications Regulatory Board of Puerto Rico of your grievance. Mail: Capital Center Building, Tower II, 235 Avenida Arterial Hostos Suite 1001, San Juan, Puerto Rico 00918-1453, Phone: 1-787-756-0804 or 1-866-578-5500. Online: www.jrtrp.gobierno.pr.

Lifeline Services

As part of a federal government program, AT&T offers discounted wireless service to qualified low-income residents in selected states. For questions or to apply for Lifeline service, call 1-800-377-9450. Puerto Rico customers should contact 1-787-405-5463.

For tips on how to protect against fraud, please visit the CPUC's website at www.CalPhoneInfo.com.

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- [MTA Metro-North New Haven Line Schedules](#)

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AT&T Wireless: 11-Day late Bill = \$41 Disconnect ?!

December 16th, 2009 by Chris (Admin) [1 Comment](#)

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IRS Tax Debt Relief

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Recently there has been a lot of press about banks being gratuitous in their overdraft fees

Unlike customers services, which must be priced to compete in the market, service industries have a long reputation of arbitrarily pricing customer penalties for non or late payment. But lately, in this economy, the policies and pricing of penalty has gotten completely out of control.

It's kind of like a penalty has no limit of intrinsic value, and has instead become an underhanded way to generate alternative revenue streams, conveniently invisible at sale time.

I have written service billing systems before. Late payment is not an issue for any human resource. An automated system handles the entire cycle of late payment, customer notification, extension, and, eventually, service disconnection (the service I authored did not levy late fees) which the user could re-enable themselves online.

There are no human beings involved in the process at any point and whatever services are consumed by the user during the late period is of no concern (depending on service of course). It's just a cost of doing business – and a tiny one.

In fact, while late fees are higher today than ever, they were probably much more in line with reality years ago, when humans had to get involved more regularly with simple disruptions which now incur no real labor or expense whatsoever.

Which is why, for a wireless company especially, hairtrigger late penalties are 100% about revenue generation and have no relation whatsoever to real inconvenience to the wireless company.

It's been many, many years since I have had a service shut off for late payment, but today we found my wife's iPhone had lost service due to nonpayment to AT&T Wireless.

As it turns out, my wife's cell phone bill was indeed late – but only 11 DAYS late. How could AT&T possibly shut off a longtime, reliable customer for being 11 days late? There must be some mistake. As we needed to call AT&T anyway to get her reconnected, we would find out.

As it turns out, there was nothing more to the story. The rep explained to me that it was AT&T policy to disconnect users at any time after the bill due date for late payment (!)

I explained to the service rep that I understood the need for a late payment policy, but that disconnection after 11 days was completely outside any sort of industry standards whatsoever.

I hadn't even received a late notice in the mail yet, or my next bill!

Then I found out the reason WHY AT&T is so hairtrigger to disconnect for late payment. Not only is there is a \$5 late payment fee, but also a \$36 (!!) reconnect charge for re-enabling the service after it has been disconnected.

By disconnecting service before the bill is paid, AT&T gets to circumvent any state laws regarding late payment (which typically restrict such charges to \$5 or 1.5% of the amount owed), by charging a separate and much higher fee for reconnection of service!

11 days late, in AT&T world, is a \$41 penalty PLUS service disruption!

And lets think about it – what the HELL is the labor involved in reconnection – or disconnection – of wireless service in 2010? A keystroke? Couldn't have been much more than that, as the rep had it done in seconds

It's completely criminal. There is no relation between my being 11 days late with a bill, and \$41 in recovery to AT&T – that's just robbery

I told the customer service rep that there was absolutely no way in hell I was paying a \$36 reconnect fee, and she said she "would see if she could get it waived" – which she did – without speaking to anyone

What actually probably happens on her end is that she attempts to see how many people she can get to NOT complain about this. I doubt AT&T gives anyone a hard time complaining about this fee – as it is just so obnoxious.

Like so many iPhone users, I am chomping at the bit to switch to Verizon. AT&T has completely relied on its exclusivity contract with the #1 smartphone while providing the worst customer service of the big three

Despite being constantly hounded for poor call quality and terrible 3G coverage, rather than hang a lantern on their problems and address them, they pretty much just pretend they don't exist

When Verizon recently exposed AT&T's relatively horrific 3G coverage, AT&T responded by saying they had the *fastest* 3G service (again, 3G speed in an area with no coverage is 0 Mbps), just ignoring the argument

Later, they responded by saying they must be better as they have less customer churn, ignoring the fact that everyone knows that that is due to the popularity of the iPhone in spite of the hatred of AT&T by iPhone users.

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1 response so far ↓

- 1 [ATT and Their Tactics](#) // Jan 7, 2010 at 2:16 pm

I am also frustrated by AT&T policy. \$41 disconnect fee is too much.

Please file a complaint with FCC

<http://esupport.fcc.gov/complaints.htm>

I did and recieved a phone call from ATT&T. It didn't do anything, however, if enough people complain, it should put an end to this unethical practice

You should also follow it up with a phone call to ATT&T letting them know you are complaining to FCC. Here is their number:

1800-498-1912 x 47116

Regards,

Leave a Comment

Name

Mail

Website

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CATHERINE GELLIS, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

VERIZON COMMUNICATIONS, INC., et al.,

Defendants.

No. C 07-03679 JSW

**ORDER DENYING
DEFENDANT'S MOTION TO
DISMISS**

Now before the Court is the motion to dismiss filed by defendant Cellco Partnership, d/b/a Verizon Wireless ("Verizon Wireless"). Having carefully reviewed the parties' papers and considered their arguments and relevant legal authority, the Court hereby DENIES Verizon Wireless's motion to dismiss.¹

BACKGROUND

Plaintiff Catherine Gellis ("Gellis") brings this purported class action to challenge the late fees charged by Verizon Wireless. On September 21, 2006, Gellis entered into a two-year agreement with Verizon Wireless for mobile phone and data service. (First Amended Complaint ("FAC"), ¶ 12.) On that date, Gellis signed a short form agreement in which Gellis agreed to the current Verizon Wireless Customer Agreement, which in turn provides, in pertinent part:

¹ Gellis requests that the Court take judicial notice of Verizon Wireless's billing statement in which Verizon Wireless describes its late fee as liquidated damages. Although Verizon Wireless does not object, the Court finds that this document is not judicially noticeable under Federal Rule of Evidence 201. Accordingly, the Court DENIES Gellis' request for judicial notice.

1 Payment is due in full as stated on your bill. IF WE DON'T RECEIVE
 2 PAYMENT IN FULL WHEN DUE, WE MAY, TO THE EXTENT PERMITTED
 3 BY LAW OF THE STATE OF THE BILLING ADDRESS WE HAVE ON FILE
 4 FOR YOU AT THE TIME, CHARGE A LATE FEE OF UP TO 1.5 PERCENT A
 MONTH (18% ANNUALLY), OR A FLAT \$5 A MONTH. WHICHEVER IS
 GREATER, ON UNPAID BALANCES.

5 (*Id.*, ¶¶ 13, 14.)

6 In mid-December of 2006, Gellis received a bill from Verizon Wireless for \$131.59
 7 which was due by January 8, 2007. (*Id.*, ¶ 17.) Gellis failed to pay the stated amount by the
 8 due date. (*Id.*) In mid-January of 2007, Gellis received another bill from Verizon Wireless.
 9 This bill was for \$268.49, which consisted of \$131.59 from the previous bill, a \$5 late fee, and
 10 \$131.90 for the next month's bill, and had a due date of "past due." (*Id.*, ¶¶ 18, 19.) On
 11 January 17, 2007, Gellis paid the entire amount due. (*Id.*, ¶ 19.)

12 Gellis alleges that \$5 late fee violates state law, and thus brings the following claims
 13 against Verizon Wireless: (1) violation of California Civil Code § 1671; (2) violation of
 14 California Consumers Legal Remedies Act, California Civil Code §§ 1750, *et seq.*; (3) violation
 15 of California Business and Professions Code §§ 17200, *et seq.*; (4) unjust enrichment; and (5)
 16 declaratory relief. Verizon now moves to dismiss all of Gellis' claims on the grounds that such
 17 state law claims are preempted by section 332 of the Federal Communications Act, 47 U.S.C. §
 18 332(c)(3)(A) ("Section 332").

19 ANALYSIS

20 A. Legal Standards Applicable to Motions to Dismiss.

21 A motion to dismiss is proper under Federal Rule of Civil Procedure Rule 12(b)(6)
 22 where the pleadings fail to state a claim upon which relief can be granted. Fed. R. Civ. P.
 23 12(b)(6). Motions to dismiss are viewed with disfavor and are rarely granted. *Hall v. City of*
 24 *Santa Barbara*, 833 F.2d 1270, 1274 (9th Cir. 1986). "A complaint may be dismissed for one
 25 of two reasons: (1) lack of a cognizable theory or (2) insufficient facts under a cognizable legal
 26 claim." *Robertson v. Dean Witter Reynolds, Inc.*, 749 F.2d 530, 534 (9th Cir. 1984). On a
 27 motion to dismiss, the complaint is construed in the light most favorable to the non-moving
 28

1 party and all material allegations in the complaint are taken to be true. *Sanders v. Kennedy*, 794
2 F.2d 478, 481 (9th Cir. 1986).

3 **B. Gellis's State Law Claims are not Preempted.**

4 Section 332 provides in pertinent: "[N]o State or local government shall have any
5 authority to regulate the entry of or the rates charged by commercial mobile service or any
6 private mobile service, except that this paragraph shall not prohibit a State from regulating the
7 other terms and conditions of commercial mobile services." 47 U.S.C. § 332(c)(3)(A). Verizon
8 Wireless argues that its late fee is a rate charged, or is part of its rate structure, and is thus
9 preempted by Section 332. Gellis counters that the late fee constitutes liquidated damages and
10 thus falls within the "other terms and conditions" which is not preempted by Section 332.

11 Rate is "[a]n amount paid or charged for a good or service." *National Ass'n of State*
12 *Util. Consumer Advocates v. F.C.C.*, 457 F.3d 1238, 1254 (11th Cir. 2006) (quoting Black's
13 Law Dictionary 1268 (7th ed. 1999)). Verizon Wireless argues that its late fee is a "rate" under
14 this definition because it is a charge for the service of extending credit to a customer beyond the
15 due date for a bill. (Mot. at 7.) The only other federal court which has addressed this issue
16 concluded that charges imposed when bills were not paid on time were a penalty for failing to
17 submit timely payment, not a fee for use of cellular phones, and thus did not qualify as "rates."
18 *Brown v. Washington/Baltimore Cellular, Inc.*, 109 F. Supp. 2d 421 (D. Md. 2000). In an
19 analogous context, another court concluded that charging liquidated damages for early
20 termination of service was a "term and condition," rather than a "rate," under Section 332.
21 Therefore, the court held that the state law claims challenging the early termination fee were not
22 preempted. *Esquivel v. Southwestern Bell Mobile Sys., Inc.*, 920 F. Supp. 713, 715 (S.D. Tex.
23 1996); *see also Phillips v. AT&T Wireless*, 2004 WL 1737385, *10 (S.D. Iowa, July 29, 2004)
24 (finding that early termination fee was not a "rate" but was an "other term or condition").

25 Verizon Wireless's reliance on *Gilmore v. Southwestern Bell Mobile System, Inc.*, 156 F.
26 Supp. 2d 916 (N.D. Ill. 2001), is misplaced. In *Gilmore*, the court held that state law claims
27 challenging a wireless carrier's "Corporate Account Administrative Fee" were preempted. *Id.*
28 at 924-25. However, in that case, the plaintiff did not allege that the fee at issue was a charge

1 for something other than the provision of services. *Id.* at 923 n.8. Moreover, the court found
2 that the plaintiff's allegations "explicitly raise[d] the issue of whether it received sufficient
3 services in return for the [f]ee." *Id.* at 924. Consequently, the court found that the plaintiff's
4 claims raised a rate issue. *Id.* In contrast, here, Gellis specifically alleges that the fee was
5 imposed as a penalty, not as a charge in return for services she obtained. Therefore, the Court
6 rejects Verizon Wireless's argument, and finds that the late fee is not charged in exchange for
7 providing any service, but instead, is imposed as a penalty for failing to pay bills on time.

8 Nor does Verizon Wireless' argument that the late fee was part of the company's rate
9 structure fare any better. In reliance on *Kiefer v. Paging Network, Inc.*, 50 F. Supp. 2d 681
10 (E.D. Mich. 1999), Verizon Wireless argues that a state law regulates rates when it seeks to
11 regulate how a carrier recovers its costs of doing business. According to Verizon Wireless, it
12 incurs costs when customers fail to pay their bills on time and the state law claims challenging
13 its late fee impermissibly interfere with Verizon Wireless's decision regarding how it seeks to
14 recover these costs. (Mot. at 13-14.)

15 In *Kiefer*, the plaintiff alleged that a company's late fee was unjust and unreasonable
16 pursuant to Section 201(b) of the Federal Communications Act.² *Kiefer*, 50 F. Supp. 2d at 681.
17 The court found that, under the doctrine of primary jurisdiction, the plaintiff's Section 201(b)
18 claims should be referred to the Federal Communications Commission to determine whether the
19 defendant's practice violated federal law. *Id.* The court rejected the plaintiff's argument that
20 the late fee should be construed as a liquidated damage term and condition, "rather than as a
21 'charge or practice' whose reasonableness is to be assessed under Section 201(b)" because the
22 plaintiff's complaint asserted Section 201(b) reasonableness claims. *Id.* at 685. The court
23 further reasoned that the late payment charge at issue was part of the overall rate structure and
24 not merely a "term and condition" of the parties' service contract. The court found:

25
26
27 ² Section 201(b) of the Federal Communications Act provides in pertinent part: "All
28 charges, practices, classifications, and regulations for and in connection with such
communication service, shall be just and reasonable, and any such charge, practice,
classification, or regulation that is unjust or unreasonable is declared to be unlawful." 47
U.S.C. § 201(b).

1 Plaintiff's argument ignores the fact that a service provider's overall rate structure
2 can take several forms; *i.e.*, it can spread the costs of untimely payments among
3 its customers by charging everyone an increased rate, or it can include in its
4 overall rate structure a separate charge for untimely payments that are to be
5 imposed solely on those customers who fail to timely pay their bills. Defendant
6 chose the latter of these two options to be included in its overall rate structure.

7 *Id.* at 865.

8 Significantly, Section 201(b) is broader than Section 322. It covers all "charges" and
9 "practices," rather than just "rates." Undoubtedly, the late fee at issue here would constitute a
10 "charge" under Section 201(b). The issue here, however, is whether the fee qualifies as a "rate"
11 under Section 322. The Court thus finds the reasoning in *Kieffer* inapposite.

12 The court in *Phillips* rejected an argument similar to the one proffered by Verizon
13 Wireless when it determined that an early termination fee was not a "rate." The court held that
14 although the wireless carrier made a compelling argument that its early termination fee was an
15 integral party of its rate structure and thus any challenge to those fees was a challenge to its
16 rates, "rate" must be narrowly defined. *Phillips*, 2004 WL 1737385. *10. Otherwise, if rates
17 were construed as broadly as the defendants urged, "there [would be] no ability to draw a line
18 between economic elements of the rate structure and normal costs of operating a
19 telecommunications business that have no greater significance than as factors to be considered
20 in determining what will ultimately be required of rates to provide a reasonable return on the
21 business investment." *Id.*; *cf. National Ass'n of State Util. Consumer Advocates*, 457 F.3d at
22 1255-56 (concluding "[t]hat the prohibition or requirement of a line item has some effect on the
23 charge to the consumer does not necessarily place a regulation within the meaning of 'rates' and
24 outside the ambit of state regulation of 'other terms and conditions.'... The inclusion of the
25 specific component[] ... 'rate structures' within the general term 'rates' does not magically
26 expand the ... statutory language").

27 The Court agrees with the reasoning in *Phillips* and finds that the term "rate" must be
28 construed narrowly. Assuming that Verizon Wireless does incur costs when customers fail to
pay their bills on time, the company chose to recover such costs through imposing a late fee
unrelated to the provision of any services, as opposed to raising its rates generally. If the Court
adopted Verizon Wireless's reasoning, any charge imposed by a wireless carrier to recover

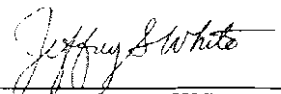
1 costs and make a profit would qualify as a "rate," regardless of whether it was imposed in
2 exchange for providing service or not. Although Section 332 could have preempted the
3 regulation of any "charge," it only preempts the regulation of "rates." Therefore, the Court
4 finds that Gellis's state law claims challenging Verizon Wireless's late fee do not challenge the
5 company's "rates," and thus are not preempted by Section 332.

6 **CONCLUSION**

7 For the foregoing reasons, the Court DENIES Verizon Wireless's motion to dismiss.

8 **IT IS SO ORDERED.**

9
10 Dated: November 5, 2007



JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JOSEPH RUWE and ELIZABETH
ORLANDO, individually and on behalf of all
others similarly situated,

No. C 07-03679 JSW

Plaintiffs,

v.

CELLCO PARTNERSHIP, d/b/a VERIZON
COMMUNICATIONS, INC. ET AL.

**ORDER DENYING
DEFENDANT'S MOTION TO
DISMISS**

Defendant.

Now before this Court is the motion to dismiss filed by defendant Celco Partnership, d/b/a Verizon Wireless ("Verizon Wireless"). Having carefully reviewed the parties papers and considered their arguments and relevant legal authority, the Court hereby DENIES Verizon Wireless's motion to dismiss. The Court finds this matter suitable for disposition without oral argument. N.D. Civil L.R. 7-1(b). Accordingly, the hearing set for March 20, 2009 at 9:00 a.m. is HEREBY VACATED.

BACKGROUND

Plaintiffs Joseph Ruwe ("Ruwe") and Elizabeth Orlando ("Orlando") bring this purported class action to challenge the late fees and reconnect fees charged by Verizon Wireless. In approximately August 2006, Ruwe entered into a two-year agreement with Verizon Wireless for mobile phone and data services. (Third Amended Complaint ("TAC") at ¶ 8.) In approximately 2003, and again in 2005, Orlando entered into two-year agreements with

Verizon Wireless for mobile phone and data services. (*Id.* at ¶ 9.) As a result of these agreements, Ruwe and Orlando were subject to the terms and conditions set forth in the Verizon Wireless Customer Agreement, which provides in pertinent part:

Charges and Fees We Set

You agree to pay all access, usage, and other charges and fees we bill you or that the user of your wireless phone accepted... You may have to pay fees to begin service or reconnect suspended service.

(*Id.* at ¶ 10.)

Your Bill

Your bill is our notice to you of your fees, charges, and other important information... We bill usage charges after calls are made or received. We bill access fees and some other charges in advance.

(*Id.*)

Our Rights To Limit Or End Service Or This Agreement

WE CAN, WITHOUT NOTICE, LIMIT, SUSPEND, OR END YOUR SERVICE OR ANY AGREEMENT WITH YOU FOR... GOOD CAUSE, including but not limited to: (a) paying late more than once in any 12 months...

(*Id.*)

When a customer fails to make timely payment, Verizon Wireless may “hotline” or “suspend” that customer’s service. (*Id.* at ¶ 21.) Hotlining impairs a customer’s service by redirecting outgoing calls to Verizon Wireless financial customer service rather than the customer’s intended recipient, whereas suspension blocks customers from receiving in-bound calls. (*Id.*) These impairment methods are distinct from disconnection. (*Id.* at ¶ 23.) After a customer’s service has been suspended, he must pay a reconnect fee for normal service to resume. (*Id.* at ¶ 22.) On at least one occasion, Verizon Wireless impaired Rowe’s and Orlando’s service due to late payment, and charged each a \$15 reconnect fee per line. (*Id.* at ¶¶ 14, 16.)

Plaintiffs allege that the \$15 reconnect fee violates California law, and on that basis bring the following claims against Verizon Wireless: (1) violation of California Civil Code § 1671; (2) violation of the California Consumers Legal Remedies Act, California Civil Code §§ 1750, *et seq.*; (3) unjust enrichment; and (5) declaratory relief. Verizon Wireless now moves

1 to dismiss these claims as they pertain to the \$15 reconnect fee on the grounds that Plaintiffs
2 have failed to state a claim that the reconnect fee is a liquidated damages provision in violation
3 of California Civil Code § 1761, and that such state law claims are preempted by section 332 of
4 the Federal Communications Act, 47 U.S.C. § 332(c)(3)(A) ("Section 332").

5 ANALYSIS

6 A. Legal Standards Applicable to Motions to Dismiss.

7 Federal Rule of Civil Procedure 12(b)(6) ("Rule 12(b)(6)") permits dismissal upon the
8 plaintiff's "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6).
9 The complaint is construed in the light most favorable to the non-moving party and all material
10 allegations in the complaint are taken to be true. *Sanders v. Kennedy*, 794 F.2d 478, 481 (9th
11 Cir. 1986). A district court should grant a motion to dismiss if the plaintiff has not plead
12 "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*,
13 550 U.S. 544, 570 (2007). "While a complaint attacked by a Rule 12(b)(6) motion to dismiss
14 does not need detailed factual allegations, a plaintiff's obligation to provide the grounds of
15 entitlement relief requires more than labels and conclusions, and a formulaic recitation of the
16 elements of a cause of action will not do." *Twombly*, 550 U.S. at 555 (internal quotation marks
17 and citations omitted). "Conclusory allegations of law and unwarranted inferences are
18 insufficient to defeat a motion to dismiss for failure to state a claim." *In re Syntex Corp. Sec.*
19 *Litig.*, 95 F.3d 922, 926 (9th Cir. 1996). "Factual allegations must be enough to raise a right to
20 relief above the speculative level ..." *Twombly*, 550 U.S. at 556 (citations omitted). In addition,
21 the pleading must not merely allege conduct that is conceivable, but it must also be plausible.
22 *Id.* at 570.

23 B. Plaintiffs' Reconnect Fee Claims are Not Preempted by the FCA.

24 Section 332 provides in pertinent part: "[N]o State or local government shall have any
25 authority to regulate the entry of or the rates charged by commercial mobile service or any
26 private mobile service except that this paragraph shall not prohibit a State from regulating the
27 other terms and conditions of commercial mobile services." 47 U.S.C. § 332(c)(3)(A). Thus,
28 the FCA grants the Federal Communications Commission (the "FCC") exclusive authority to

1 regulate rates charged by wireless service providers, but reserves the power of the states to
2 regulate all other terms and conditions. *Id.* Verizon Wireless argues that its reconnect fee is a
3 rate charged for a service, and is thereby preempted by Section 332. Plaintiffs argue that the
4 reconnect fee is an “other term and condition,” and is therefore not preempted by Section 332.

5 Whether or not the reconnect fee is a rate determines whether Plaintiffs’ claims are
6 preempted. The term “rate” is not defined in the FCA. In its prior order this Court defined rate
7 as “[a]n amount paid or charged for a good or service.” (Order Denying Defendant’s Motion to
8 Dismiss (“Order”) at 3). The Supreme Court has explained that in analyzing whether any
9 charge is considered a rate, it is important to determine whether the purported rate is in
10 exchange for a service, and what that service is. *Am. Tel. & Tel. Co. v. Central Office Tel.*, 524
11 U.S. 214, 223 (1998) (finding that rates “have meaning only when one knows the services to
12 which they are attached”). Moreover, the term “rate” should be construed narrowly. *Phillips v.*
13 *AT&T Wireless*, 2004 WL 1737385, *10 (S.D. Iowa July 29, 2004). Thus, this Court previously
14 held that the term “rate,” as it is used in Section 332, does not include late fees charged by
15 Verizon Wireless. (Order at 6.)

16 Given this definition of “rate” under Section 332, the Court must determine whether the
17 reconnect fee is an amount paid for the service of reactivation, as Verizon Wireless contends.
18 Here, the purported service is “an automated process whereby Verizon Wireless stops impairing
19 service.” (TAC at ¶ 22.) The Court finds no case law elaborating on the meaning of “service”
20 in this context. Service is commonly understood as “doing something useful for a person or
21 company for a fee.” *Black’s Law Dictionary* 1399 (8th ed. 2004). Here, Verizon Wireless
22 contends it provides a service by allowing normal service to resume. This is allegedly achieved
23 by the “flip[ping] of an automated switch.” (Opp. Br. at 1; Reply Br. at 7.) The customer, in
24 order to resume normal, unimpaired service pays both the unpaid balance and reconnect fee.
25 (TAC at ¶ 22.) This payment of the outstanding monthly fees is what would be charged in
26 exchange for normal mobile services. The reconnect fee paid by the customer, as characterized
27 by Verizon Wireless, is essentially charged for the same service, suggesting that it is actually a
28 late fee, rather than a separate charge for service.